

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

PREAMBLE

1. **Sections Affected**
R7-2-808
- Rulemaking Action**
Amend
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 15-203(A)
Implementing statutes: A.R.S. §§ 15-705 and 15-802.01
3. **The effective date of the rules:**
September 20, 1996
4. **A list of all previous notices appearing in the Register addressing the adopted rule:**
Notice of Rulemaking Docket Opening:
1 A.A.R. 1709, September 29, 1995
Notice of Proposed Rulemaking:
2 A.A.R. 999, February 23, 1996
Notice of Rulemaking Docket Opening:
2 A.A.R. 1464, April 19, 1996
5. **The name and address of agency personnel with whom persons may communicate regarding the rule:**
Name: Corinne L. Velasquez, Administrator
Address: State Board of Education
1535 West Jefferson, Room 418
Phoenix, Arizona 85007
Telephone: (602) 542-5057
Fax: (602) 542-3046
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**
The amendment to R7-2-808 prescribes procedures for pupils who are schooled in the home to participate in interscholastic athletic competition on behalf of a school in the attendance area where the student resides. These procedures are included in an existing rule, R7-2-808, Pupil Participation in Extracurricular Activities, to insure that policies are consistent between home-schooled students and students enrolled in a public school. This amendment was initiated in response to the requirements specified in A.R.S. § 15-802.01, which was passed during the 1995 legislative session.
7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable.
8. **The summary of the economic, small business, and consumer impact:**
The requirement for the State Board of Education to prescribe rules for policies regarding students participating in extracurricular activities has been in effect for approximately 9 years. During the 1995 legislative session, A.R.S. § 15-802.01 was passed which required the State Board of Education to adopt rules prescribing procedures for the participation of children instructed at home in interscholastic athletic competition.

The proposed amendment to R7-2-808 allows districts to charge fees to home-schooled students participating in interscholastic athletic competitions consistent with fees charged to students who are enrolled in the district. Since the participation of a home-schooled student does not affect the total number of members that make up a team, it is not anticipated that equipment costs will

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vary by allowing home-schooled students to participate. However, districts are reimbursed for transportation of students to an athletic event. This reimbursement is in the form of a weight that is added to the current funding formula. Since home-schooled students are not considered as "enrolled" in the school district, they will not be counted in the formula and the district will not receive transportation reimbursement for these students. The amount of the reimbursement for transporting students to athletic events is minimal.

9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Page 1, delineated paragraph (b), change "form" to "from" to correct a typographical error.

10. A summary of the principal comments and the agency response to them:

The Board received oral and written comment from Tom Pickrell, Esq., representing the Arizona School Boards Association. Mr. Pickrell's comments focused specifically on the language of the proposed subsection (A), which states that if a student meets the eligibility requirements specified, that a home-schooled student shall be allowed to participate in interscholastic athletic competition. Mr. Pickrell believed that the use of the word "shall" exceeded the authority given to the State Board of Education by the legislature. The State Board of Education was considerate of Mr. Pickrell's opinion. There was, however, some interpretation of the statute required as the statute is not clear, as presently written, whether the "may be allowed to participate" was discretionary on the part of the school district or on the part of the home-schooled student. In contrast, if the word "shall" was to replace the word "may", then a school district would be required to allow a home-schooled student to participate, regardless of whether or not the student met the eligibility requirements, including demonstrating the talent and ability required to make such a team.

In addition, it is the responsibility of the State Board of Education to promulgate rules that are fair and equitable among all school districts as well as all students. It could be argued that if the legislature had intended for the decision as to whether or not home-schooled students could participate to be left to the school district, and the purpose of the legislation was to correct a specific instance regarding the rules established by an interscholastic athletic association, that the language that required the State Board of Education to adopt rules prescribing procedures would have been unnecessary as both of the points would have been made in the first line of subsection (A) and subsection (B) in its entirety.

The State Board of Education understands that it was not the intent of the legislature to require school districts to accept ALL home-schooled students to participate in interscholastic athletic competitions regardless of the abilities of the student or compliance with other eligibility requirements. Therefore, the Board believed that the most fair and equitable way to address this situation was to allow the home-schooled student to participate and still allow the school district the ability to make the final determination. The rule language, as adopted, states that a home-schooled student "shall be allowed to participate" subject to meeting the eligibility requirements specified in the rule and provided that the students meet other eligibility requirements established by the school district. Thus, a home-schooled student that meets the eligibility requirements established by the rule and the district shall be allowed the opportunity to compete for a position on the team, however, it is the decision of the school district whether or not that student possesses the talent and ability sought by the district for representation on the team. The words "shall be allowed" do not, therefore, force or mandate the school districts into allowing home-schooled students to participate in interscholastic athletic competitions.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

12. Incorporations by reference and their locations in the rules:

None.

13. Was this rule previously adopted as an emergency rule?

No.

14. The full text of the rules follows:

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

ARTICLE 8. COMPLIANCE

R7-2-808. Pupil Participation in Extracurricular Activities

ARTICLE 8. COMPLIANCE

R7-2-808. Pupil Participation in Extracurricular Activities

- A.** The following standards are effective for district school students in grade 6, if part of a middle school, and or in grades 7 through 12 and home school students in grades 7 through 12. Subject to meeting the eligibility requirements specified in this rule and provided that all students meet the requirements of this rule and other district eligibility requirements, a district school student shall be allowed to participate in extracurricular activities and a home school student shall be allowed to participate in interscholastic athletic competition. If a student

reaches the age of 15 on or before September 1 of the school year, the student shall not be eligible to participate at the 7th and 8th grade levels. If a student reaches the age of 19 or before September 1 of the school year, the student shall not be eligible to participate at the 9th through 12th grade levels.

1-B. Definition Definitions Extracurricular activities:

- a-1. Extracurricular activities are:** All interscholastic activities which are of a competitive nature and involve more than 1 school where a championship, winner, or rating is determined; and all those endeavors of a continuous and ongoing nature for which no credit is earned in meeting graduation or promotional requirements and are organized, planned, and sponsored by the district consistent with district policy.
- b. Activities which are an integral part of a credit class**

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shall be excepted from the rule.

2. Interscholastic Athletic Competition is: All interscholastic sports activities which are of a competitive nature, involve more than 1 school where a championship, winner, or rating is determined and involve physical exercise and established game rules.

2.C. Academic Eligibility eligibility requirements and ineligibility.

- a.1. Eligibility. To be eligible to participate in extracurricular activities and interscholastic athletic competition, a student shall be required to:

- i.a. Earn a passing grade in each course or subject in which the student is enrolled, and instructed. Passing grade shall be determined on a cumulative basis, from the beginning on instruction to the recording of the final grade for the course.

- i.b. Maintain satisfactory progress toward advancement, promotion, or graduation.

- b.2. Ineligibility. When it is determined that a student has failed to meet the requirements specified for eligibility, the student shall be declared ineligible to participate in extracurricular activities and shall remain ineligible until the requirements of eligibility are met.

- i. The governing board shall establish the criteria for a passing grade and satisfactory progress toward promotion or graduation, taking into account the needs of children placed in special education programs pursuant to R7-2-401 et seq. Passing grades shall be determined on a cumulative basis, from the beginning of instruction to the recording of a final grade for the course.

- ii.3. Every 9 weeks or less, At least every 9 weeks, or more frequently as determined by the governing board, district personnel shall check review the progress of students to determine their eligibility status. If a student is declared ineligible, the student shall remain ineligible until a subsequent check is performed the next reporting and it is determined that the student meets the eligibility requirements specified in subsection (2C)(a1).

- a. The governing board shall establish the criteria for a passing grade and satisfactory progress toward promotion or graduation for district students, taking into account the needs of children placed in special education programs pursuant to R7-2-401 et seq.

- b. The individual providing the primary instruction of a home school student shall submit a notarized affidavit which provides:

- i. The affidavit is being submitted under penalty of perjury;

- ii. Whether the student is receiving a passing grade in each course or subject being taught;

- iii. Whether the student is maintaining satisfactory

progress towards advancement, promotion, or graduation;

- iv. If a student has been enrolled in a district as a full-time student, the student shall not be eligible to participate in interscholastic athletic competition as a home-schooled student until an Affidavit of Intent to Home School has been filed with the County Superintendent and 30 days has elapsed since the filing of the affidavit.

3.D. Each governing board shall adopt a policy and implement a program pursuant to that policy to provide.

- a.1. Oral or written preliminary notice to all district students and their parents or guardian of pending ineligibility;

- b.2. Written notice to students and their parents or guardians when ineligibility has been determined;

- e.3. Educational support services to district students declared ineligible because of this rule, as well as those notified of pending ineligibility;

4. Oral or written preliminary notice to all students and their parents or guardian of the time frames related to participation in extracurricular activities and interscholastic athletic competition. Written notice shall be made available within the school's administrative office to all students and their parents or guardians.

5. Written notice made available to all students, their parents, or guardians at the district's administrative office regarding policies related to transportation, insurance, physical condition, fees, uniforms, calendars, practice requirements, and schedules and acceptance on a team. These policies are to be made available within the school's administrative office to all students and their parents or guardians.

6. That all policies related to interscholastic athletic competition do not impose additional requirements on home-schooled students than are imposed on district students.

E. All students shall register and pay fees established by the district for participation in interscholastic athletic competition or extracurricular activities and meet all qualifications, responsibilities, and standards of behavior and performance, including those related to demonstration of skill and proficiency, practice requirements, physical prerequisites, and acceptance onto the team, squad, or group.

E. District students may participate in interscholastic athletic competition and extracurricular activities in only the school in which the student is enrolled. Home school students may participate in interscholastic athletic competition at a school only if the student actually resides within the boundaries of the attendance area of a school. Home school students are not eligible for open enrollment pursuant to A.R.S. § 15-816 through 816.06.